



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/709,015

04/07/2004

Matthew J. Banet

A-0004

3014

48202

7590

08/09/2006

Triage Wireless, Inc.

Matthew John Banet

6540 LUSK BLVD., C200

SAN DIEGO, CA 92121

EXAMINER

MALLARI, PATRICIA C

ART UNIT

PAPER NUMBER

3735

DATE MAILED: 08/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

6

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/709,015

Applicant(s)

BANET ET AL.

Examiner

Patricia C. Mallari

Art Unit

3735

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 July 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

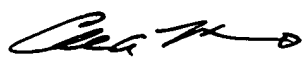
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


Charles A. Marmor, II
SPE, Art Unit 3735

Continuation of 11. does NOT place the application in condition for allowance because the applicants' arguments are found to be unpersuasive.

The applicants first argue that one of ordinary skill in the art would not be motivated to combine Hosaka with Goodman. However, as described in the previous Office action, Hosaka teaches using a photoelectric sensor to detect a pulse wave but does not give the details of the sensor. Goodman teaches a photoelectric sensor used to detect a pulse wave. Therefore, it would have been obvious to one of ordinary skill in the art to use the photoelectric sensor of Goodman as that of Hosaka since Hosaka teaches a photoelectric sensor to detect a pulse wave and Goodman describes such a sensor used to detect a pulse wave.

The applicants further contend that the disclosure of Ting implies that the wireless transmitter is external to the blood pressure monitor of Ting. Claim 1 of the instant application merely states that the housing comprises the microprocessor which is configured to determine blood pressure information. The cited disclosure of Ting contains no such implication that a microprocessor is not housed by the housing and only indicates that the watch may be connected to a personal computer by a wired or wireless connection. In fact, col. 8, lines 8-10 describe a microprocessor used to determine blood pressure housed within the watch/housing.

With regard to applicants' arguments that reliance upon Goodman's description of a clip device requires a replacement of Goodman's entire optical system and technique with those of Hosaka, it is noted that the proposed modification is a modification of Hosaka and not Goodman. Additionally, the rejection does not appear to rely on the clip device described on col. 13, line 59-col. 14, line 6 but rather on a description of a blood pressure or pulse wave sensing device in which the sensor, computing means, and transmission means are integrated into a component that would adhere to a body skin area, described on col. 13, lines 50-58 of Goodman. In any case, the embodiment of the device of Hosaka in a similar component does not appear to affect the principle of operation of Hosaka in any way.

As to the combination of Hosaka in view of Goodman, Ting, and Kawaguchi, as stated in the previous Office action, Kawaguchi is relied upon for its teaching of a pulse wave sensor, not merely because it generically mentions "blood pressure" as stated by the applicants.

With regard to Stutman and Goldberg, the applicants appear merely to state a general summary of the references rather than presenting arguments as to why the combination, as described in the previous Office action, would be unobvious.